UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 2, 2009

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Opposition No. 91178927
Opposition No. 91180771
Opposition No. 91180772
Opposition No. 91183482
Opposition No. 91185755
Opposition No. 91186579
Opposition No. 91189847

Royal Crown Company, Inc.

v.

The Coca-Cola Company

Opposition No. 91184434

The Coca-Cola Company

v.

Royal Crown Company, Inc.

Cheryl Goodman, Interlocutory Attorney:

This case comes up on Royal Crown Company, Inc.'s (hereinafter "RC") motion, filed March 25, 2009, for leave to amend its notices of opposition in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755 and 91186579. RC seeks to amend the notices of opposition to add a claim that the term "ZERO" in The Coca Cola Company's (hereinafter "TCCC") applied-for marks is generic and therefore incapable of functioning as an indicator of source.

In response, TCCC states that it "does not oppose RC's request that it be permitted to amend its pleadings[1];'" however, it does oppose the form in which RC seeks to make the amendments.

RC submitted six proposed amended notices of opposition with its motion, one for each proceeding in which it is the opposer in this consolidated case. TCCC requests that RC be ordered to file a single consolidated notice of opposition to include the proceedings consolidated herein, as well as Opposition No. 91189847 (filed April 22, 2009 with answer due on June 1, 2009), and any opposition filed against pending application Serial No. 78698990 for the mark VAULT ZERO for which RC has filed an extension of time to oppose, such notice of opposition due no later than June 17, 2009. TCCC submits that requiring a consolidated pleading is in the "interest of efficiency and economy of all parties" with respect to the proceedings currently consolidated, Opposition No. 91189847, and pending application Serial No. 78698990.

[1] While TCCC states that it does not agree with the grounds set forth in RC's motion for leave to amend, it acknowledges the liberal standard set forth in Fed. R. Civ. P. 15. TCCC's response to motion for leave to amend at 2, filed April 28, 2009.

With regard to the request for a consolidated pleading, RC argues that this request is "ancillary," "not supported by a proper motion," "inefficient," and "impractical" as not all of the "Notices of Opposition contain the same grounds for relief." RC further submits that "no additional economies will be served" and that RC "would in fact incur additional work" in preparing a single Amended Notice of Opposition. Lastly, opposer submits that TCCC has "no standing to request" that RC file a single amended notice of opposition with respect to Opposition No. 91189847 which is not part of these consolidated proceedings nor with respect to application Serial No. 78698990 "for which an opposition is not due until June 17, 2009."

The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. *See* Fed. R. Civ. P. 15(a); TBMP Section 507.02 (2d ed. rev. 2004). The timing of a motion for leave to amend is a major factor in determining whether the adverse party would be prejudiced by allowance of the proposed amendment. *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1505-6 (TTAB 1993). The Board will generally grant a motion to amend when the proceedings are still in the pre-trial phase. *Polaris Industries v. DC Comics*, 59 USPQ2d 1798, 1799 (TTAB

2001) (granting opposer's motion to amend dilution claim, finding no prejudice where motion was filed prior to the close of discovery and opposer stipulated to an extension of discovery).

RC's proposed claim of genericness has been sufficiently pleaded in the notices of opposition, and entry of the amended pleadings would not violate settled law. Moreover, the Board finds the motion to amend to be timely and find no prejudice to TCCC in allowing the amendments, as discovery is still open.

Accordingly, RC's motion for leave to amend the notices of opposition to add a genericness claim to Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755 and 91186579 is granted.

With regard to TCCC's request for a single consolidated amended pleading with respect to Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755 and 91186579, the Board has the power to direct that a consolidated pleading be filed. Fed. R. Civ. P. 42; *See Carefirst of Maryland, Inc., DBA Carefirst Blue Cross Blue Shield v. FirstHealth of the Carolinas, Inc*. (Opposition Nos. 91116355 and 91124847), 2003 WL 1195023 (March 7, 2003); *Cf. In re Wirebound Boxes Antitrust Litigation* 128 F.R.D. 262 (D. Minn 1989).

The majority of the allegations in opposer's six amended pleadings track each other using identical paragraphs; thus, the benefits of collecting six answers for

each of the six consolidated proceedings is not readily discernable. Moreover, a consolidated pleading prevents unnecessary duplication, reduces the proliferation of duplicative papers filed in the already consolidated proceeding and reduces the potential for confusion. While the Board appreciates the fact that RC has spent the time to file six proposed amended complaints, the Board finds it preferable from the standpoint of judicial economy to deal with a single consolidated complaint.

Inasmuch as the Board has previously consolidated these proceedings, the Board finds applicant's request for a consolidated pleading supports judicial economy and reduces confusion. Additionally, because Opposition No. 91189847, by this order, as indicated below, is consolidated with the already consolidated proceedings, this proceeding should also be included as part of the consolidated pleading. However, the Board will not direct opposer to file a consolidated notice of opposition with respect to pending application Serial No. 78698990 for which no current opposition proceeding exists.

In view thereof, applicant's request for a consolidated pleading is granted to the extent indicated above.

Opposer is allowed until TWENTY DAYS from the mailing date of this order to file a single amended consolidated notice of opposition with respect to Opposition Nos.

91178927, 91180771, 91180772, 91183482, 91185755 and 91186579, 91189847.

Applicant is allowed until FORTY DAYS from the mailing date of this order to file its answer to the amended consolidated notice of opposition.

The above-ordered pleadings will supercede all other pleadings in the opposition and will be the operative pleadings in the consolidated case.

Consolidation

As provided for in the Board's January 27, 2009 order, Opposition No. 91189847 is hereby consolidated with the proceedings herein. See January 27, 2009 order at ¶5, p.2. The record will continue to be maintained in the "parent case" Opposition No. 91178927, but all papers filed in the consolidated opposition proceeding should identify all proceeding numbers in ascending order. Although the consolidated oppositions retain their separate character, as a consolidated case, they may be presented on the same record and briefs.

The Board notes that the issue is not yet joined in Opposition No. 91189847. However, the Board presumes applicant will be filing its answer in Opposition No. 91189847 on June 1, 2009. Applicant should note that once consolidated, all other papers with respect to this

proceeding should be filed in the parent case, Opposition No. 91178927.

As set forth in the Board's order of January 27, 2009, the parties have agreed to retain the discovery and trial schedule of the parent proceeding. Therefore, disclosure, discovery and trial dates in the consolidated proceeding are reset accordingly.

In summary, RC's motion for leave to amend is GRANTED, TCCC's request for a consolidated pleading is granted, and Opposition No. 91189847 is hereby consolidated with Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91184434.

Proceedings herein are resumed and dates are reset as follows:

RC's time to file amended consolidated notice of opposition	June 21, 2009
TCCC's time to answer consolidated amended notice of opposition Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755 and 91186579 and 91189847	July 11, 2009
Expert disclosure	July 6,, 2009
Discovery closes	August 5, 2009
Pretrial disclosures of plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847	September 19, 2009
30-day testimony period to close for plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847	November 3, 2009

Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755 and 91186579, 91189847, and 91184434

Pretrial disclosures of defendant in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847 and plaintiff in Opposition No. 91184434	November 18, 2009
30-day testimony period to close for defendant in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847 and plaintiff in Opposition No. 91184434	January 2, 2010
Rebuttal disclosures of plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847; and pretrial disclosures of defendant in Opposition No. 91184434	January 17, 2010
30-day testimony period to close for defendant in Opposition No. 91184434; and 15-day rebuttal testimony period to close for plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847	March 3, 2010
Rebuttal disclosures of plaintiff in Opposition No. 91184434	March 18, 2010
15-day rebuttal testimony period to close for plaintiff in Opposition No. 91184434	April 17, 2010
Brief for plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847 due	June 16, 2010
Brief for defendant in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 9118984; and brief for plaintiff in Opposition No. 91184434 due	July 16, 2010
Reply brief, if any, for plaintiff in Opposition Nos. 91178927, 91180771, 91180772, 91183482, 91185755, 91186579 and 91189847 due; and brief for defendant in Opposition No. 911884434 due	August 15, 2010
Reply brief, if any, for plaintiff in Opposition No. 911884434 due	August 30, 2010

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.